UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,994	07/24/2001	Joseph H. Berkovitz	101.957.124	5234

23483 7590 05/15/2007
WILMER CUTLER PICKERING HALE AND DORR LLP
60 STATE STREET
BOSTON, MA 02109

EXAMINER	
WU, RUTAO	

ART UNIT	PAPER NUMBER
3628	

NOTIFICATION DATE	DELIVERY MODE
05/15/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

teresa.carvalho@wilmerhale.com
tina.dougal@wilmerhale.com
michael.mathewson@wilmerhale.com

Office Action Summary	Application No.	Applicant(s)	
	09/911,994	BERKOVITZ ET AL.	
	Examiner	Art Unit	
	Rob Wu	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 February 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. In response filed February 21 2007 the applicant amended claims 1, 5-9, 12-15, 20-26, 31, 34, 37. New claim 40 has been introduced. No claims have been canceled. Claims 1-40 are pending in the application.

Response to Arguments

2. Applicant's arguments with respect to claims 1-39 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-12, 14, 16, 20-29, 34-35, 37-40 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat No. 6,876,975 to Zimmerman et al.

Referring to claim 1:

A computer system for dynamic pricing of at least one item comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the at least one item that are not conditional; (col 4: lines 20-25) and

At least one dynamic calculator for making modifications to the price to be paid by the customer for the at least one item based upon conditional rules. (col 4: lines 27-29, 44-55)

Referring to claim 2:

The computer system of claim 1 wherein the at least one static calculator comprise a pre-calculator that determines an initial price. (col 4: lines 20-25)

Referring to claim 3:

The computer system of claim 1 wherein the at least one static calculator comprises a post-processing calculator that adjusts a determined price according to a price generation algorithm. (col 4: lines 47-48)

Referring to claim 4:

The computer system of claim 1 wherein the at least one dynamic calculator further comprises a qualifier and a discount calculator. (col 4: lines 44-47)

Referring to claim 5:

The computer system of claim 4 wherein the qualifier applies rules to determine if the at least one item is qualifies to received a discount. (col 5: lines 37-42)

Referring to claim 6:

The computer system of claim 5 wherein the rules comprise a condition that must be satisfied for the at least one item to qualify for the discount. (col 4: lines 44-46, 53-55)

Referring to claim 7:

The computer system of claim 5 wherein the rules comprise a condition that must be satisfied for the at least one item to qualify for the discount and a target upon which to apply the discount. (col 4: lines 44-46, 53-55)

Referring to claim 8:

The computer system of claim 5 wherein the at least one discount calculator applies a discount to the at least one item that is determined to be qualified to receive a discount. (col 4: lines 45-49)

Referring to claim 9:

The computer system of claim 1 wherein the at least one static calculators further comprises a pre-calculator that determines an initial price and a post processing calculator that adjusts a determined price according to a price generation algorithm; (col 4: lines 20-25, 47-48)

And

The at least one dynamic calculator further comprises a qualifier and a discount calculator. (col 4: lines 44-47; col 5: lines 37-42)

Referring to claim 10:

The computer system of claim 1 wherein the at least one static calculator and the at least one dynamic calculator make up a pricing engine. (col 4: lines 20-32; col 5: lines 37-42)

Referring to claim 11:

The computer system of claim 10 further comprising a plurality of pricing engines. (col 4: lines 44-55)

Referring to claim 12:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates a price for the at least one item. (col 4: lines 44-55)

Referring to claim 14:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates an applicable tax amount for the at least one item. (col 4: lines 50-53)

Referring to claim 16:

The computer system of claim 10 wherein the pricing engine is connected to a network for determining prices of items for sale over the network. (Fig 1)

Referring to claim 20:

A system for dynamic pricing of at least one item comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the at least one item that are not conditional; (col 4: lines 20-25)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the at least one item based upon conditional rules, (col 4: lines 27-29, 44-55)

Wherein the at least one dynamic calculator further comprises a qualifier and a discount calculator.(col 4: lines 44-47)

Referring to claim 21:

A system for dynamic pricing of at least one item comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the at least one item that are not conditional; (col 4: lines 20-25)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the at least one item based upon conditional rules, (col 4: lines 27-29, 44-55)

Wherein the at least one static calculator comprises at least one pre-calculator that determines an initial price. (col 4: lines 20-26)

Referring to claim 22:

A system for dynamic pricing of at least one item comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the at least one item that are not conditional; (col 4: lines 20-25)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the at least one item based upon conditional rules, (col 4: lines 27-29, 44-55)

Wherein the at least one static calculator comprises at least one post-processing calculator that performs final adjustments to a price based upon a price generation algorithm. (col 4: lines 47-48)

Referring to claim 23:

A system for dynamic pricing of at least one item comprising:

At least two static calculator for making modifications to the price to be paid by the customer for the at least one item that are not conditional; (col 4: lines 20-25, col 4: lines 47-48)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the at least one item based upon conditional rules, (col 4: lines 27-29, 44-55)

Wherein the at least two static calculators further comprise a pre-calculator that determines an initial price and a post-processing calculator that adjusts a determined price according to a price generation algorithm (col 4: lines 20-25, 47-48)

Referring to claim 24:

A computer system fr dynamic pricing of at least one item comprising:

A module for determining an initial price on the at least one item to be paid by the customer; (col 4: lines 20-25) and

At least one dynamic calculator for modifying the initial price on the at least one item to be paid by the customer based upon conditional rules. (col 4: lines 27-29, 44-55)

Referring to claim 25:

A method of performing dynamic pricing on at least one item comprising the steps of:

Determining an initial price on the at least one item. (col 4: lines 20-25)

Performing one or more dynamic price calculations on the at least one item based upon one or more conditional rules. (col 4: lines 44-55)

Wherein these two pricing steps yield a price to be paid by the customer for the at least one item. (Col 4: lines 47-48)

Referring to claim 26:

A method of performing dynamic pricing on at least one item comprising the steps of:

Performing one ore more static price calculations on the at least one item that are not condition; (col 4: lines 20-25)

Performing one or more dynamic price calculations on the at least one item based upon one or more conditional rules, (col 4: lines 44-55)

Wherein these two price calculation steps yield a price to be paid by the customer for the at least one item. (Col 4: lines 47-48)

Referring to claim 27:

The method of claim 26 further comprising the step of utilizing elements of a price environment to perform the calculations. (col 4: lines 44-55)

Referring to claim 28:

The method of claim 26 further comprising outputting price information after the calculations are complete. (Fig 3A, 3B)

Referring to claim 29:

The method of claim 28 wherein the price information comprises a price calculation history which further comprises one or more of the rules used to calculate the price (col 5: lines 48-55)

Referring to claim 34:

A computer program product, residing on a computer readable medium, for dynamic pricing of at least one item, the computer program product comprising instructions for causing a computer to:

Determine an initial price on the at least one item (col 4: lines 20-25)

Perform dynamic price calculations on the at least one item. (col 4: lines 44-55)

Wherein these instructions yield a price to be paid by the customer for the at least one item. (col 4: lines 47-48)

Referring to claim 35:

The computer program product of claim 34 wherein the computer readable medium includes a magnetic disk. (col 3: lines 41-43)

Referring to claim 37:

A computer program product, residing on a computer readable medium, for dynamic pricing of at least one item, the computer program product comprising instructions for causing a computer to:

Perform static price calculations on the at least one item that are not conditional; (col 4: lines 20-25)

perform dynamic price calculations on the at least one item based upon conditional rules, (col 4: lines 44-55)

Wherein these instructions yield a price to be paid by the customer for the at least one item. (col 4: lines 47-48)

Referring to claim 38:

The computer system of claim 40 wherein the order comprises a single item. (col 4: lines 50-51)

Referring to claim 39:

The computer system of claim 40 wherein the order comprises a plurality of items. (col 4: lines 54-55)

Referring to claim 40:

The computer system of claim 1 wherein a customer's order includes the at least one item. (col 4: lines 50-55)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al in view of U.S. Pat No. 6,058,373 to Blinn et al.

Referring to claim 13:

Zimmerman et al does not expressly disclose wherein at least one of the plurality of pricing engines calculates a shipping price for the at least one item. Blinn et al disclose at least one of the plurality of pricing engines calculates a shipping price for the at least one item. (Fig 6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Zimmerman et al to also include

calculating a shipping price for the at least one item if the item needs to be shipped to the customer. Zimmerman et al would be motivated to perform such modification because it is well known in the arts that if an item is to be shipped to a customer a shipping cost is calculated for the item.

Referring to claim 15:

Zimmerman et al does not expressly disclose wherein at least one of the plurality of pricing engines calculates an amount comprising a price for all items in an order, shipping costs and applicable taxes for the order. Blinn et al disclose at least one of the plurality of pricing engines calculates an amount comprising a price for all items in an order, shipping costs and applicable taxes for the order. (Fig 6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Zimmerman et al to also include calculating a shipping price, tax and total price for the order of the item needs to be shipped to the customer. Zimmerman et al would be motivated to perform such modification because it is well known in the arts that that if an item is to be shipped to the customer, the tax, shipping fee and the total is calculated for the customer for customer's payment.

7. Claims 17-19, 30-33, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al.

Referring to claims 17, 18 and 19:

Zimmerman et al disclose a computer network system, Zimmerman et al does not expressly disclose wherein the network is the Internet, a wireless network, or a telephone based network.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Zimmerman et al to use Internet, wireless, or telephone based network since they are all well known network technologies in the art.

Also the difference between the different types of network is only found in the non-functional descriptive material and ate not functionally involved in the steps recited. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to claim 30:

Zimmerman et al does not expressly disclose wherein the price calculation history may be used to recalculated a price in the future. However, from Fig 6 it is clear that Alternate data for items are stored and can be used to calculate and recalculate a price of the item.

Referring to claim 31:

A method of allowing a user to create rules for dynamic pricing of at least one item comprising the steps of:

Providing at least one static calculator for making modifications to the price to be paid by the customer for the at least one item that are not conditional; (col 4: lines 20-25)

Providing at least one dynamic calculator for making modifications to the price to be paid by the customer for the at least one item based upon conditional rules; (col 4: lines 44-55) and

Zimmerman et al does not expressly disclose providing a user interface that allows a user to input at least one conditional rule. However it would have been obvious at the time of the invention for Zimmerman et al to provide a method of entering the alternate data. Zimmerman et al would be motivated to do so because different items go on sale all the time, so alternate data must have been enter for the products for the correct price to be calculated.

Referring to claim 32:

Zimmerman et al does not expressly disclose wherein the rule is input in text format. However given Fig 2 provided by Zimmerman et al and the disclosure at column 4 lines 50-55, it would have been obvious at the time of the invention for Zimmerman et al to input the rules in text format.

Referring to claim 33:

Zimmerman et al does not expressly disclose a step of transforming the rule to an executable format. However, it would have been obvious at the time of the invention that the rules are transformed into an executable format because the alternate data gets executed for discount calculations. (col 4: lines 50-55)

Referring to claim 36:

Zimmerman et al does not expressly disclose the computer readable medium includes an optical disk. Zimmerman et al disclose that a fixed disk drive is used in the computer system (col 3: lines 41-43). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Zimmerman et al to also use an optical disk. Zimmerman et al would be motivated to perform such modification to ensure the maximum flexibility in input and storage devices. Furthermore, optical disks are well know in the computer arts and Zimmerman et al disclose that the components in the system are computers. (col 3: lines 9-10)

Conclusion

8. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Wu whose telephone number is (571)272-3136. The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rw

THOMAS A. DIXON
PRIMARY EXAMINER